

AMENDED IN SENATE APRIL 13, 1998

SENATE BILL

No. 2091

Introduced by Senator Watson

February 20, 1998

An act to ~~add Sections 11469.5 and 11469.6 to amend Section 361.5 of the Welfare and Institutions Code, relating to foster care dependent children.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 2091, as amended, Watson. ~~Foster care: ombudsmen~~
Dependent children.

Existing law generally authorizes the juvenile court to order that reunification services be provided to a parent or guardian when a minor is removed from a parent's or guardian's custody. Existing law provides, however, that reunification services need not be provided to a parent or guardian when a court finds by clear and convincing evidence any one of certain enumerated circumstances.

This bill would expand the list of enumerated circumstances to include circumstances in which the parent or guardian has willfully abducted the minor from his or her placement and refused to disclose the minor's whereabouts, refused to return physical custody of the minor to his or her placement, or refused to return physical custody of the minor to the probation officer.

~~Existing law provides for the Aid to Families with Dependent Children-Foster Care program, under which, pursuant to a combination of federal, state, and county funds,~~

~~aid on behalf of eligible children is paid to foster care providers.~~

~~This bill would authorize each county to establish a local foster care ombudsman who would administer a foster care ombudsman program in the county. The bill would also require the State Department of Social Services to regularly, but not less than 4 times per year, bring foster youth together to advise the department as consumers on how to make improvements on issues of concern to foster care youth.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11469.5 is added to the Welfare~~
2 *SECTION 1. Section 361.5 of the Welfare and*
3 *Institutions Code is amended to read:*
4 361.5. (a) Except as provided in subdivision (b) of
5 this section or when the parent has voluntarily
6 relinquished the minor and the relinquishment has been
7 filed with the State Department of Social Services, or
8 upon the establishment of an order of guardianship
9 pursuant to Section 360, whenever a minor is removed
10 from a parent’s or guardian’s custody, the juvenile court
11 shall order the probation officer to provide child welfare
12 services to the minor and the minor’s mother and
13 statutorily presumed father, or guardians. Upon a finding
14 and declaration of paternity by the juvenile court or proof
15 of a prior declaration of paternity by any court of
16 competent jurisdiction, the juvenile court may order
17 services for the minor and the biological father, if the
18 court determines that the services will benefit the child.
19 Child welfare services, when provided, shall be provided
20 as follows:
21 (1) For a minor who, on the date of initial removal
22 from the physical custody of his or her parent or guardian,
23 was three years of age or older, court-ordered services
24 shall not exceed a period of 12 months.
25 (2) For a minor who, on the date of initial removal
26 from the physical custody of his or her parent or guardian,



1 was under the age of three years, court-ordered services
2 shall not exceed a period of six months.

3 However, court-ordered services may be extended up
4 to a maximum time period not to exceed 18 months if it
5 can be shown that the objectives of the service plan can
6 be achieved within the extended time period. The court
7 shall extend the time period only if it finds that there is
8 a substantial probability that the minor will be returned
9 to the physical custody of his or her parent or guardian
10 within the extended time period or that reasonable
11 services have not been provided to the parent or
12 guardian. If the court extends the time period, the court
13 shall specify the factual basis for its conclusion that there
14 is a substantial probability that the minor will be returned
15 to the physical custody of his or her parent or guardian
16 within the extended time period. The court also shall
17 make findings pursuant to subdivision (a) of Section 366.
18 When counseling or other treatment services are
19 ordered, the parent or guardian shall be ordered to
20 participate in those services, unless the parent's or
21 guardian's participation is deemed by the court to be
22 inappropriate or potentially detrimental to the minor.
23 Physical custody of the minor by the parents or guardians
24 during the 18-month period shall not serve to interrupt
25 the running of the period. If at the end of the 18-month
26 period, a minor cannot be safely returned to the care and
27 custody of a parent or guardian without court supervision,
28 but the minor clearly desires contact with the parent or
29 guardian, the court shall take the child's desire into
30 account in devising a permanency plan.

31 In cases where the minor was under the age of three
32 years on the date of the initial removal from the physical
33 custody of his or her parent or guardian, the court shall
34 inform the parent or guardian that the failure of the
35 parent or guardian to participate regularly in any
36 court-ordered treatment programs or to cooperate or
37 avail himself or herself of services provided as part of the
38 child welfare services case plan may result in a
39 termination of efforts to reunify the family after six
40 months.

1 Except in cases where, pursuant to subdivision (b), the
2 court does not order reunification services, the court shall
3 inform the parent or parents of Section 366.25 or 366.26
4 and shall specify that the parent's or parents' parental
5 rights may be terminated.

6 (b) Reunification services need not be provided to a
7 parent or guardian described in this subdivision when the
8 court finds, by clear and convincing evidence, any of the
9 following:

10 (1) That the whereabouts of the parent or guardian is
11 unknown. A finding pursuant to this paragraph shall be
12 supported by an affidavit or by proof that a reasonably
13 diligent search has failed to locate the parent or guardian.
14 The posting or publication of notices is not required in
15 that search.

16 (2) That the parent or guardian is suffering from a
17 mental disability that is described in Chapter 2
18 (commencing with Section 7820) of Part 4 of Division 12
19 of the Family Code and that renders him or her incapable
20 of utilizing those services.

21 (3) That the minor or a sibling of the minor has been
22 previously adjudicated a dependent pursuant to any
23 subdivision of Section 300 as a result of physical or sexual
24 abuse, that following that adjudication the minor had
25 been removed from the custody of his or her parent or
26 guardian pursuant to Section 361, that the minor has been
27 returned to the custody of the parent or guardian from
28 whom the minor had been taken originally, and that the
29 minor is being removed pursuant to Section 361, due to
30 additional physical or sexual abuse.

31 (4) That the parent or guardian of the minor has
32 caused the death of another minor through abuse or
33 neglect.

34 (5) That the minor was brought within the jurisdiction
35 of the court under subdivision (c) of Section 300 because
36 of the conduct of that parent or guardian.

37 (6) That the minor has been adjudicated a dependent
38 pursuant to any subdivision of Section 300 as a result of
39 severe sexual abuse or the infliction of severe physical
40 harm to the minor, a sibling, or a half-sibling by a parent



1 or guardian, as defined in this subdivision, and the court
2 makes a factual finding that it would not benefit the
3 minor to pursue reunification services with the offending
4 parent or guardian.

5 A finding of severe sexual abuse, for the purposes of this
6 subdivision, may be based on, but is not limited to, sexual
7 intercourse, or stimulation involving genital-genital,
8 oral-genital, anal-genital, or oral-anal contact, whether
9 between the parent or guardian and the minor or a sibling
10 or half-sibling of the minor, or between the minor or a
11 sibling or half-sibling of the minor and another person or
12 animal with the actual or implied consent of the parent
13 or guardian; or the penetration or manipulation of the
14 minor's, sibling's, or half-sibling's genital organs or
15 rectum by any animate or inanimate object for the sexual
16 gratification of the parent or guardian, or for the sexual
17 gratification of another person with the actual or implied
18 consent of the parent or guardian.

19 A finding of the infliction of severe physical harm, for
20 the purposes of this subdivision, may be based on, but is
21 not limited to, deliberate and serious injury inflicted to or
22 on a minor's body or the body of a sibling or half-sibling
23 of the minor by an act or omission of the parent or
24 guardian, or of another individual or animal with the
25 consent of the parent or guardian; deliberate and
26 torturous confinement of the minor, sibling, or
27 half-sibling in a closed space; or any other torturous act or
28 omission which would be reasonably understood to cause
29 serious emotional damage.

30 (7) That the parent is not receiving reunification
31 services for a sibling or a half-sibling of the minor
32 pursuant to paragraph (3), (5), or (6).

33 (8) That the minor was conceived by means of the
34 commission of an offense listed in Section 288 or 288.5 of
35 the Penal Code, or by an act committed outside of this
36 state which if committed in this state would constitute
37 such an offense. This paragraph only applies to the parent
38 who committed the offense or act.

39 (9) That the minor has been found to be a child
40 described in subdivision (g) of Section 300, that the



1 parent or guardian of the minor willfully abandoned the
2 minor, and the court finds that the abandonment itself
3 constituted a serious danger to the child. For the purposes
4 of this paragraph, “serious danger” means that without
5 the intervention of another person or agency, the minor
6 would have sustained severe or permanent disability,
7 injury, illness, or death. For purposes of this paragraph,
8 “willful abandonment” shall not be construed as actions
9 taken in good faith by the parent without the intent of
10 placing the minor in serious danger.

11 (10) That (A) the court ordered a permanent plan of
12 adoption, guardianship, or long-term foster care for any
13 siblings or half-siblings of the minor because the parent
14 or guardian failed to reunify with the sibling or
15 half-sibling after the sibling or half-sibling had been
16 removed from that parent or guardian pursuant to
17 Section 361 and that parent or guardian is the same parent
18 or guardian described in subdivision (a), or (B) the
19 parental rights of a parent or guardian over any sibling or
20 half-sibling of the minor had been permanently severed,
21 and that, according to the findings of the court, this
22 parent or guardian has not subsequently made a
23 reasonable effort to treat the problems that led to
24 removal of the sibling or half-sibling of that minor from
25 that parent or guardian.

26 (11) That the parent or guardian has been convicted
27 of a violent felony, as defined in subdivision (c) of Section
28 667.5 of the Penal Code.

29 (12) That the parent or guardian of the minor has a
30 history of extensive, abusive, and chronic use of drugs or
31 alcohol and has resisted prior treatment for this problem
32 during a three-year period immediately prior to the filing
33 of the petition which brought that minor to the court’s
34 attention, or has failed or refused to comply with a
35 program of drug or alcohol treatment described in the
36 case plan required by Section 358.1 on at least two prior
37 occasions, even though the programs identified were
38 available and accessible.

39 (13) That the parent or guardian of the minor has
40 advised the court that he or she is not interested in



1 receiving family maintenance or family reunification
2 services or having the minor returned to or placed in his
3 or her custody and does not wish to receive family
4 maintenance or reunification services.

5 The parent or guardian shall be represented by counsel
6 and shall execute a waiver of services form to be adopted
7 by the Judicial Council. The court shall advise the parent
8 or guardian of any right to services and of the possible
9 consequences of a waiver of services, including the
10 termination of parental rights and placement of the child
11 for adoption. The court shall not accept the waiver of
12 services unless it states on the record its finding that the
13 parent or guardian has knowingly and intelligently
14 waived the right to services.

15 *(14) That the parent or guardian has on one or more*
16 *occasions willfully abducted the minor from his or her*
17 *placement and refused to disclose the minor's*
18 *whereabouts, refused to return physical custody of the*
19 *minor to his or her placement, or refused to return*
20 *physical custody of the minor to the probation officer.*

21 (c) In deciding whether to order reunification in any
22 case in which this section applies, the court shall hold a
23 dispositional hearing. The probation officer shall prepare
24 a report which discusses whether reunification services
25 shall be provided. When it is alleged, pursuant to
26 paragraph (2) of subdivision (b), that the parent is
27 incapable of utilizing services due to mental disability,
28 the court shall order reunification services unless
29 competent evidence from mental health professionals
30 establishes that, even with the provision of services, the
31 parent is unlikely to be capable of adequately caring for
32 the minor within 12 months.

33 The court shall not order reunification for a parent or
34 guardian described in paragraph (3), (4), (6), (7), (8),
35 (9), (10), (11), (12), or (13) of subdivision (b) unless the
36 court finds, by clear and convincing evidence, that
37 reunification is in the best interest of the minor.

38 In addition, the court shall not order reunification in
39 any situation described in paragraph (5) of subdivision
40 (b) unless it finds that, based on competent testimony,



1 those services are likely to prevent reabuse or continued
2 neglect of the minor or that failure to try reunification
3 will be detrimental to the minor because the minor is
4 closely and positively attached to that parent. The
5 probation officer shall investigate the circumstances
6 leading to the removal of the minor and advise the court
7 whether there are circumstances which indicate that
8 reunification is likely to be successful or unsuccessful and
9 whether failure to order reunification is likely to be
10 detrimental to the minor.

11 The failure of the parent to respond to previous
12 services, the fact that the minor was abused while the
13 parent was under the influence of drugs or alcohol, a past
14 history of violent behavior, or testimony by a competent
15 professional that the parent's behavior is unlikely to be
16 changed by services are among the factors indicating that
17 reunification services are unlikely to be successful. The
18 fact that a parent or guardian is no longer living with an
19 individual who severely abused the minor may be
20 considered in deciding that reunification services are
21 likely to be successful, provided that the court shall
22 consider any pattern of behavior on the part of the parent
23 that has exposed the minor to repeated abuse.

24 (d) If reunification services are not ordered pursuant
25 to paragraph (1) of subdivision (b) and the whereabouts
26 of a parent become known within six months of the
27 out-of-home placement of the minor, the court shall order
28 the probation officer to provide family reunification
29 services in accordance with this subdivision. However,
30 the time limits specified in subdivision (a) and Section
31 366.25 are not tolled by the parent's absence.

32 (e) (1) If the parent or guardian is incarcerated or
33 institutionalized, the court shall order reasonable services
34 unless the court determines, by clear and convincing
35 evidence, those services would be detrimental to the
36 minor. In determining detriment, the court shall consider
37 the age of the minor, the degree of parent-child bonding,
38 the length of the sentence, the nature of the treatment,
39 the nature of crime or illness, the degree of detriment to
40 the minor if services are not offered and, for minors 10



1 years of age or older, the minor's attitude toward the
2 implementation of family reunification services, and any
3 other appropriate factors. Reunification services are
4 subject to the 18-month limitation imposed in subdivision
5 (a). Services may include, but shall not be limited to, all
6 of the following:

7 (A) Maintaining contact between the parent and
8 minor through collect telephone calls.

9 (B) Transportation services, where appropriate.

10 (C) Visitation services, where appropriate.

11 (D) Reasonable services to extended family members
12 or foster parents providing care for the minor if the
13 services are not detrimental to the minor.

14 An incarcerated parent may be required to attend
15 counseling, parenting classes, or vocational training
16 programs as part of the service plan if these programs are
17 available.

18 (2) The presiding judge of the juvenile court of each
19 county may convene representatives of the county
20 welfare department, the sheriff's department, and other
21 appropriate entities for the purpose of developing and
22 entering into protocols for ensuring the notification,
23 transportation, and presence of an incarcerated or
24 institutionalized parent at all court hearings involving
25 proceedings affecting the minor pursuant to Section 2625
26 of the Penal Code.

27 (3) Notwithstanding any other provision of law, if the
28 incarcerated parent is a woman seeking to participate in
29 the community treatment program operated by the
30 Department of Corrections pursuant to Chapter 4.8
31 (commencing with Section 1174) of Title 7 of Part 2 of,
32 Chapter 4 (commencing with Section 3410) of Title 2 of
33 Part 3 of, the Penal Code, the court shall determine
34 whether the parent's participation in a program is in the
35 child's best interest and whether it is suitable to meet the
36 needs of the parent and child.

37 (f) If a court, pursuant to paragraph (2), (3), (4), (5),
38 (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision
39 (b) or paragraph (1) of subdivision (e), does not order
40 reunification services, it shall conduct a hearing pursuant



1 to Section 366.25 or 366.26 within 120 days of the
2 dispositional hearing. However, the court shall not
3 schedule a hearing so long as the other parent is being
4 provided reunification services pursuant to subdivision
5 (a). The court may continue to permit the parent to visit
6 the minor unless it finds that visitation would be
7 detrimental to the minor.

8 (g) Whenever a court orders that a hearing shall be
9 held pursuant to Section 366.25 or 366.26, it shall direct the
10 agency supervising the minor and the licensed county
11 adoption agency, or the State Department of Social
12 Services when it is acting as an adoption agency in
13 counties which are not served by a county adoption
14 agency, to prepare an assessment which shall include:

15 (1) Current search efforts for an absent parent or
16 parents.

17 (2) A review of the amount of and nature of any
18 contact between the minor and his or her parents since
19 the time of placement.

20 (3) An evaluation of the minor's medical,
21 development, scholastic, mental, and emotional status.

22 (4) A preliminary assessment of the eligibility and
23 commitment of any identified prospective adoptive
24 parent or guardian, particularly the caretaker, to include
25 a social history including screening for criminal records
26 and prior referrals for child abuse or neglect, the
27 capability to meet the minor's needs, and the
28 understanding of the legal and financial rights and
29 responsibilities of adoption and guardianship.

30 (5) The relationship of the minor to any identified
31 prospective adoptive parent or guardian, the duration
32 and character of the relationship, the motivation for
33 seeking adoption or guardianship, and a statement from
34 the minor concerning placement and the adoption or
35 guardianship, unless the minor's age or physical,
36 emotional, or other condition precludes his or her
37 meaningful response, and if so, a description of the
38 condition.

39 (6) An analysis of the likelihood that the minor will be
40 adopted if parental rights are terminated.



1 (h) In determining whether reunification services will
2 benefit the minor pursuant to paragraph (6) or (7) of
3 subdivision (b), the court shall consider any information
4 it deems relevant, including the following factors:

5 (1) The specific act or omission comprising the severe
6 sexual abuse or the severe physical harm inflicted on the
7 minor or the minor's sibling or half-sibling.

8 (2) The circumstances under which the abuse or harm
9 was inflicted on the minor or the minor's sibling or
10 half-sibling.

11 (3) The severity of the emotional trauma suffered by
12 the minor or the minor's sibling or half-sibling.

13 (4) Any history of abuse of other children by the
14 offending parent or guardian.

15 (5) The likelihood that the minor may be safely
16 returned to the care of the offending parent or guardian
17 within 18 months with no continuing supervision.

18 (6) Whether or not the minor desires to be reunified
19 with the offending parent or guardian.

20 (i) The court shall read into the record the basis for a
21 finding of severe sexual abuse or the infliction of severe
22 physical harm under paragraph (6) of subdivision (b),
23 and shall also specify the factual findings used to
24 determine that the provision of reunification services to
25 the offending parent or guardian would not benefit the
26 minor.

27 (j) This section shall become operative January 1, 1999.

28 ~~and Institutions Code, to read:~~

29 ~~11469.5. (a) Each county may establish a position of~~
30 ~~local foster care ombudsman to administer a foster care~~
31 ~~ombudsman program in that county. The ombudsman~~
32 ~~program shall serve as a mechanism for children to report~~
33 ~~individual complaints with the system.~~

34 ~~(b) The foster care ombudsman program may be~~
35 ~~staffed by older children in the foster care system and~~
36 ~~recent graduates of the foster care system. These staff~~
37 ~~members shall work with the foster care ombudsman to~~
38 ~~offer support, referrals, and advocacy to foster care~~
39 ~~children. It is the intent of the Legislature that counties~~
40 ~~be encouraged to work with local chapters of the~~



1 ~~California Youth Connection to staff the foster care~~
2 ~~ombudsman program.~~

3 ~~(e) Counties may provide training, administrative~~
4 ~~support, and guidance to the foster care ombudsman~~
5 ~~program. Counties may work with existing programs,~~
6 ~~such as court-appointed special advocates, to provide~~
7 ~~support and training to the foster care ombudsman~~
8 ~~program.~~

9 ~~(d) Foster care ombudsman program staff may be~~
10 ~~trained in the following areas:~~

11 ~~(1) Child welfare services.~~

12 ~~(2) The legal system.~~

13 ~~(3) Dispute and problem resolution techniques.~~

14 ~~(e) Foster care children shall have the right to contact~~
15 ~~the ombudsman program. Foster families and group~~
16 ~~homes shall not prevent children from contacting an~~
17 ~~ombudsman.~~

18 ~~(f) The State Department of Social Services shall seek~~
19 ~~federal funding under Part E (commencing with Section~~
20 ~~670) of Subchapter 4 of Chapter 7 of Title 42 of the United~~
21 ~~States Code in order to finance the programs authorized~~
22 ~~pursuant to this section.~~

23 ~~(g) This section shall not supersede any law or~~
24 ~~regulation pertaining to community care facilities, as~~
25 ~~defined in Section 1502 of the Health and Safety Code.~~

26 ~~SEC. 2. Section 11469.6 is added to the Welfare and~~
27 ~~Institutions Code, to read:~~

28 ~~11469.6. (a) By July 1, 1999, the director or his or her~~
29 ~~representative shall reach out to the foster care youth~~
30 ~~community in order to ensure the receipt of input from~~
31 ~~foster youth in the development and monitoring of~~
32 ~~services and programs focused on foster care youth. The~~
33 ~~department shall regularly, but not less than four times~~
34 ~~each year, bring foster youth together to advise the~~
35 ~~department as consumers on how to make improvements~~
36 ~~on issues of concern to foster care youth.~~

37 ~~(b) Each fiscal year the department, with input from~~
38 ~~foster care youth, shall set an agenda for the following~~
39 ~~fiscal year. This agenda shall be comprised of issues that~~



1 ~~the foster care youth feel are important to children in the~~
2 ~~foster care system.~~

3 ~~(e) In the 1999-2000 fiscal year, the foster care youth~~
4 ~~shall advise the department on all of the following policy~~
5 ~~concerns:~~

6 ~~(1) Family visitation in community care facilities.~~

7 ~~(2) Employment opportunities and job training.~~

8 ~~(3) Assessing the possibility of a group home allowance~~
9 ~~policy.~~

10 ~~(4) Discipline systems in group home.~~

11 ~~(5) Creating a homelike environment in group homes.~~

12 ~~(6) Foster care children's involvement in~~
13 ~~extracurricular activities.~~

14 ~~(d) Any of the issues specified in subdivision (c) not~~
15 ~~addressed by the foster care youth in the 1999-2000 fiscal~~
16 ~~year shall be put on the agenda for the following fiscal~~
17 ~~year.~~

18 ~~(e) Since the input of foster children is important on~~
19 ~~the local level, the Legislature finds that county welfare~~
20 ~~directors should be encouraged to create similar advisory~~
21 ~~processes for foster care children to advise on issues at the~~
22 ~~local level.~~

